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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/816,238	04/01/2004	Joseph M. Asher	069547.0193	9139
5073	7590	11/19/2007		
BAKER BOTTS L.L.P. 2001 ROSS AVENUE SUITE 600 DALLAS, TX 75201-2980			EXAMINER POND, ROBERT M	
			ART UNIT 3625	PAPER NUMBER
			NOTIFICATION DATE 11/19/2007	DELIVERY MODE ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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## Office Action Summary

Application No.

10/816,238

Applicant(s)

ASHER ET AL.

Examiner

Robert M. Pond

Art Unit

3625

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 06 September 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 11-18, 20 and 38-64 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 11-18, 20 and 38-64 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)                        | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Response to Amendment***

The Applicant amended claims 11, 13-18 and 20, newly added claims 38-64 and canceled claims 1-10, 19 and 21-37. All pending claims 11-18, 20 and 38-64 were examined in this final office action necessitated by amendment.

### ***Response to Arguments***

Applicant's arguments filed 06 September 2007 have been fully considered but they are not persuasive. Arguments relying on Mossberg as the primary reference are moot. Mossberg was withdrawn as the primary reference.

### ***Claim Objections***

1. Claims 41, 42, 44, 50, 51, 53, 54, 56, 62 and 63 are objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Each claim is interpreted to be subject to infringement without infringing the parent claim.

***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

- 2. Claims 11-17, 20, 38-47, 49-59 and 61-64 are rejected under 35 USC 103(a) as being unpatentable over Krueger (Paper #20060904, 20020062276) in view of Brett (US 6,704,713).**

Krueger teaches systems and methods for conducting wireless auctions and determining a winning bidder and communicating with the winning bidder using a client local or remote to the local or remote auction server (see at least abstract; Fig. 1; 0001-0016). electronic means of using wireless devices (i.e. client devices) to submit bids at a live auction to a remotely connected or locally connected server managing the auction, and further teaches aspects of silent auctions and the use of graphical user interfaces (e.g. web browsers, GUIs) (see at least abstract; 0011, 0013-0016; 0026, 0034, 0056). Kruger teaches the live auction, conducted at the live auction site, will have attendees and an auctioneer, and assistants may also be present. As the auction is conducted, the LAMS server keeps track of the current bid and offer, for each and every item, through closing of the bids. As such, the information is transmitted and shared through the LAMS server, through the remote Wireless Network Proxy Server(s), to the hand held devices interested in the particular auction. Additionally, a hand held

wireless subscriber can indicate the items of interest and receive notification, only for those items. Krueger further teaches:

- selecting an item for auction, in which the item is selected from a plurality of items stored on a server described in a central repository on a server;

When the item up for bid becomes a real time event, the user is expected to be viewing any display they have on their wireless device. The auction, item number, current bid, current offer, current bidder, and an expiration timer could be present on this display. Krueger: see at least 0028.

- transmitting an indication that the selected item is available for auction for a period of time;

When the item up for bid becomes a real time event, the user is expected to be viewing any display they have on their wireless device. The auction, item number, current bid, current offer, current bidder, and an expiration timer could be present on this display. Krueger: see at least 0028.

- receiving from each of a plurality of bidders, at least one bid to purchase the selected item in which each bid is received before the period of time has expired and each bidder is located remotely from the server;

Mossberg or Krueger

- See below for: determining that the period of time has expired based on determining that:

1) a first quantity of bids that is received before a first time interval is less than a first pre-determined value; and

- 2) a second quantity of bids that is received before a second time interval is less than a second pre-determined value; and
- determining a winning bid for the selected item based on predetermined criteria. Pre-determined that highest bid wins (please note: highest bid reflects a value that is greater than previously submitted bid values).

Krueger teaches all the above as noted under the 103(a) rejection and teaches i) it is the auctioneer who historically makes the definitive decision to end bidding for an item (see at least 0042), ii) silent auctions, iii) closing a bidding session and iv) implementing automatic methods for processing bids, determining a winning bid, notifying a winning bidder, and validating the winner. Although Krueger does not mention determining that the period of time has expired based on determining that a first quantity of bids that is received before a first time interval is less than a first pre-determined value, Brett on the other hand teaches an auction system that is aware of the bidding activity and concludes the auction automatically based on the activity threshold. Brett teaches a bidding activity meter 302 is used as shown in FIG. 15. The bidding activity meter shows a graphical representation of the rate of bidding on tickets in the venue (e.g., bids per hour). The meter shows a number of different bidding rates from left to right across the meter. A bar extends from the left side of the meter toward the right side of the meter to represent the current bidding rate. In this manner the participant can see the current rate of bids placed for tickets in the venue. The

bidding activity meter allows the system to have an adjustable bidding window based upon bidding activity. The adjustable bidding window may be defined as an adjustable period of time that may be immediately terminated upon the bidding rate reaching a predefined low threshold. For example, the system may set up an auction for tickets to a particular event starting at 10 a.m. on a particular day. The auction may be set up to accept bids for at least five hours, until 3 p.m., but for no more than fourteen hours, until 12 p.m. Bidding will remain open after 3 p.m., so long as the bidding continues above the predetermined threshold (e.g., 1000 bids per hour). However, if the bidding drops below that threshold, the auction will be closed immediately. Thus, the auction will definitely accept bids from 10 a.m. until 3 p.m. If the total bidding from 3 p.m. to 4 p.m. exceeds the threshold rate, the bidding will remain open. However, if at any time before 12 p.m., the bidding rate drops below the threshold, the bidding will immediately cease. Thus, if the threshold is 1000 bids per hour and the total bidding during the hours of 9 p.m. and 10 p.m. drops to 900 bids, the auction will close and no further bids will be taken. See at least Fig. 15; col. 13, lines 1-30. Therefore it would have been obvious to one of ordinary skill in the art at time the invention was made to modify Krueger to implement determining that the period of time has expired based on determining that a first quantity of bids that is received before a first time interval is less than a first pre-determined value as taught by Brett, because a person of ordinary skill has good reason to pursue the known options within his or her technical grasp. If

this leads to the anticipated success, it is likely the product/method is not of innovation but of ordinary skill and common sense. The first threshold by example is 1000 bids per hour.

Although Krueger does not mention a second quantity of bids that is received before a second time interval is less than a second pre-determined value, Brett on the other hand teaches all the above as noted under the 103(a) rejection and further teaches a second threshold by example of 900 bids that is used to close the bidding session. Therefore it would have been obvious to one of ordinary skill in the art at time the invention was made to modify Krueger to implement determining that the period of time has expired based on determining that a second quantity of bids that is received before a first time interval is less than a second pre-determined value as taught by Brett, because a person of ordinary skill has good reason to pursue the known options within his or her technical grasp. If this leads to the anticipated success, it is likely the product/method is not of innovation but of ordinary skill and common sense.

- Rejection of apparatus claims 41-47 and 49-52 is based on the same rationale as noted above.
- Rejection of article of manufacture claims 53-59 and 61-64 is based on the same rationale as noted above.

**3. Claims 18, 48 and 60 are rejected under 35 USC 103(a) as being unpatentable over Krueger (Paper #20060904, 20020062276) and Brett (US**



**6,704,713) as applied to claims 17, 47 and 59, further in view of Mossberg (Paper #20070314-A, US 5,803,500).**

Krueger and Brett teach and suggest all the above as noted under the 103(a) rejection and teach and suggest i) an auction site includes a registration form which will contain that registrant's personal information including records for the fields illustrated in the participant database of FIG. 7, as well as a checkbox for agreement to the terms of the auction rules, and a password, if desired to protect access. The password may be chosen for use when accessing the auction, in lieu of re-entering the credit card number. This allows the participant to have an agent place bids, without disclosing the credit card number. (please note: teach and suggest the use of a card and PIN associated with the registered bidder to identify the bidder) and ii) systems and method applicable to silent auctions.

Although Krueger and Brett do not mention a the combination of card and card reader to identify the bidder, Mossberg on the other hand teaches a system and method of conducting a silent auction for events whereby bidders are local to the silent auction event. Mossberg teaches the use of bid sheets for traditional silent auctions and teaches an improved method of data entry using machine-readable bid sheets. Mossberg teaches an alternative approach of preprogramming silent auction items and their respective price codes into a computer database that would be accessible through a card reading device located adjacent each silent auction item. To access the computer database through the card reading device, each potential bidder inserts their bidder card

and code into the device before placing a bid on the item and recording the bid placed on the item directly into the computer database (i.e. receiving each bid a central repository) (see at least abstract; col. 1, lines 5 through col. 3, lines 16; col. 3, line 43 through col. 5, line 3). Therefore it would have been obvious to one of ordinary skill in the art at time the invention was made disclose a card and card reader for bidder identification as taught by Mossberg, because a person of ordinary skill has good reason to pursue the known options within his or her technical grasp. If this leads to the anticipated success, it is likely the product/method is not of innovation but of ordinary skill and common sense.

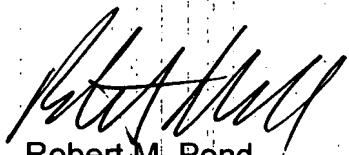
- Rejection of apparatus claim 48 is based on the same rationale as noted above.
- Rejection of article of manufacture claim 60 is based on the same rationale as noted above.

**Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert M. Pond whose telephone number is 571-272-6760. The examiner can normally be reached on 8:30AM-5:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Jeff Smith can be reached on 571-272-6763. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
Robert M. Pond  
Primary Examiner  
November 12, 2007